

SENATE BILL No. 560

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2; IC 31-17; IC 33-24-6-3; IC 31-17-2-13; IC 31-17-2-14; IC 31-17-2-15.

Synopsis: Joint physical and legal custody. Establishes a rebuttable presumption that joint legal custody and joint physical custody are in the best interests of a child in a dissolution of marriage. Requires the court to provide written findings if the court finds the presumption has been rebutted and joint custody is not in the best interests of the child. Provides that a court may reduce or cease parental contact between a parent and the parent's children only if the court makes written findings of fact based on clear and convincing evidence of substance abuse, spousal abuse, or child abuse or neglect. Provides that if a parent knowingly falsely accuses the other parent of child abuse or neglect or spousal abuse, the parent who was falsely accused may challenge the parental fitness of the accusing parent. Provides that during the pendency of a custody case, if both parents were residing in the home before filing for dissolution of marriage, each parent shall maintain an equal time share allocation between the parents and the children. Permits a court to cease or reduce contact between a parent and child during a pending dissolution case if the court makes written findings that substance abuse, spousal abuse, or child abuse or neglect occurred. Provides procedures if a parent is relocating. Changes the time a parent must file an objection to a relocation of a child notice. Provides that if a parent knowingly and intentionally prevents the other parent from the other parent's parenting time with a child, a court shall hold the parent in contempt of court. Provides that each parent is financially liable for their own attorney's fees concerning child custody matters. Provides that divorced parents with a child shall alternate years when the parent may claim the federal dependent tax deduction. Provides that certain

(Continued next page)

Effective: July 1, 2009.

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January 20, 2009, read first time and referred to Committee on Judiciary.



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recorded evidence is admissible in court in family law proceedings. Requires meetings, hearings, and conferences in a family law action to be recorded. Requires the division of state court administration to compile statistics concerning the failure to pay child support.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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SENATE BILL No. 560

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 31-9-2-67 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 67. "Joint legal
3 custody", for purposes of ~~IC 31-17-2-13, IC 31-17-2-14, and~~
4 ~~IC 31-17-2-15~~, **IC 31-17-2**, means that the persons awarded joint legal
5 custody will share authority and responsibility for the major decisions
6 concerning the child's upbringing, including the child's education,
7 health care, and religious training. **The term does not include an**
8 **equal division of physical custody of the child.**
- 9 SECTION 2. IC 31-9-2-67.5 IS ADDED TO THE INDIANA CODE
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2009]: Sec. 67.5. "**Joint physical custody**", for purposes of
12 **IC 31-17-2**, means that the persons awarded joint physical custody
13 will share physical custody of the child as equally as possible.
- 14 SECTION 3. IC 31-17-2-8 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. **(a)** The court shall



determine custody and enter a custody order in accordance with the best interests of the child.

(b) In determining the best interests of the child, there is no presumption favoring either parent: a rebuttable presumption that:

- (1) joint legal custody; and**
 - (2) joint physical custody;**
- are in the best interests of the child.**

(c) To rebut the presumption under subsection (b), the court shall consider all relevant factors, including the following:

- ~~(1) The age and sex of the child.~~
- ~~(2) The wishes of the child's parent or parents.~~
- ~~(3) The wishes of the child; with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.~~
- ~~(4) The interaction and interrelationship of the child with:~~
 - ~~(A) the child's parent or parents;~~
 - ~~(B) the child's sibling; and~~
 - ~~(C) any other person who may significantly affect the child's best interests.~~

(1) The capacity and disposition of the parents to provide the child love, affection, guidance, and protection.

(2) The capacity and disposition of the parents to provide the academic and religious education of the child.

(3) The capacity and disposition of the parents to provide food, clothing, and medical care.

(4) The willingness and ability of each of the parents to demonstrate facilitation and encouragement of a close and continuing relationship between the child and the other parent.

(5) The child's adjustment to the child's:

- (A) home;**
- (B) school; and**
- (C) community.**

(6) The mental and physical health of all individuals involved.

~~(7) Evidence of a pattern of domestic or family violence by either parent.~~

~~(8) (7) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.~~

(d) The burden of overcoming the presumption under subsection (b) rests on the parent challenging the presumption. The presumption may be overcome only by clear and convincing evidence of the unfitness of the parent being challenged that would

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1 cause substantial harm to the child.

2 (e) If a court orders a mental health evaluation of either parent,
3 the evaluation shall be required for both parents.

4 (f) If the court finds that the presumption under subsection (b)
5 has been rebutted, the court shall include written findings in its
6 order concerning the:

7 (1) factors relevant in rebutting the presumption under
8 subsection (b); and

9 (2) reasons that:

10 (A) joint legal custody is not;

11 (B) joint physical custody is not; or

12 (C) both joint legal custody and joint physical custody are
13 not;

14 in the best interests of the child.

15 SECTION 4. IC 31-17-2-8.4 IS ADDED TO THE INDIANA CODE
16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
17 1, 2009]: **Sec. 8.4. If a parent knowingly falsely accuses the other
18 parent of child abuse or neglect or spousal abuse, the parent who
19 was falsely accused may challenge the parental fitness of the
20 accusing parent.**

21 SECTION 5. IC 31-17-2-8.5 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.5. (a) This section
23 applies only if the court finds by clear and convincing evidence that the
24 child has been cared for by a de facto custodian.**

25 (b) In addition to the factors listed in ~~section 8~~ **section 8(c)(1)**
26 **through 8(c)(7)** of this chapter, the court shall consider the following
27 factors in determining custody:

28 (1) The wishes of the child's de facto custodian.

29 (2) The extent to which the child has been cared for, nurtured, and
30 supported by the de facto custodian.

31 (3) The intent of the child's parent in placing the child with the de
32 facto custodian.

33 (4) The circumstances under which the child was allowed to
34 remain in the custody of the de facto custodian, including whether
35 the child was placed with the de facto custodian to allow the
36 parent now seeking custody to:

37 (A) seek employment;

38 (B) work; or

39 (C) attend school.

40 (c) If a court determines that a child is in the custody of a de facto
41 custodian, the court shall make the de facto custodian a party to the
42 proceeding.

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(d) The court shall award custody of the child to the child's de facto custodian if the court determines that it is in the best interests of the child.

(e) If the court awards custody of the child to the child's de facto custodian, the de facto custodian is considered to have legal custody of the child under Indiana law.

SECTION 6. IC 31-17-2-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.7. During the pendency of any custody case if both parents were:**

- (1) residing in the home before the petition for dissolution of marriage was filed, each parent shall maintain an equal time share allocation between both parents and their children; and
- (2) not residing in the home before the petition for dissolution of marriage was filed, the court shall issue a reasonable timetable to establish an equal time share allocation as soon as possible.

SECTION 7. IC 31-17-2-8.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.9. (a) Except as provided in subsection (b), allegations of substance abuse, spousal abuse, or child abuse or neglect and any protective orders issued based on an allegation of substance abuse, spousal abuse, or child abuse are not sufficient evidence to cease or reduce contact between a parent and child while a dissolution of marriage petition is pending.**

(b) A court may cease or reduce contact between a parent and child while a dissolution of marriage petition is pending only if the court makes written findings of fact based on clear and convincing evidence of substance, spousal, or child abuse or neglect.

(c) A court shall report an allegation of substance abuse, spousal abuse, or child abuse or neglect to the appropriate prosecuting attorney.

SECTION 8. IC 31-17-2-10.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.3. Before a custody determination, a court shall require each parent to submit a parenting plan to the court stating parental preferences and agreements concerning each child's education, upbringing, and religious training.**

SECTION 9. IC 31-17-2-10.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.6. (a) After a child custody**

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1 order is entered, the parents shall share decision making authority
2 and responsibility regarding important decisions affecting the
3 child's welfare.

4 (b) If parents are not able to agree to important decisions
5 affecting the child's welfare, the parents shall submit the issue to
6 a mediator selected by the court, and the parents shall comply with
7 the mediator's decision.

8 SECTION 10. IC 31-17-2.2-0.5 IS ADDED TO THE INDIANA
9 CODE AS A NEW SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. Relocation by either parent**
11 **with a child may take place only by joint agreement of both**
12 **parents. In the absence of a joint relocation agreement, the burden**
13 **of overcoming the presumption against relocation is on the**
14 **relocating parent.**

15 SECTION 11. IC 31-17-2.2-1, AS ADDED BY P.L.50-2006,
16 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2009]: Sec. 1. (a) A relocating individual must file a notice of
18 the intent to move, **a proposed custody order, a proposed parenting**
19 **time order, and a proposed child support order**, with the clerk of the
20 court that:

- 21 (1) issued the custody order or parenting time order; or
- 22 (2) if subdivision (1) does not apply, has jurisdiction over the
- 23 legal proceedings concerning the custody of or parenting time
- 24 with a child;

25 and send a copy of the notice to any nonrelocating individual.

26 (b) Upon motion of a party, the court shall set the matter for a
27 hearing to review and modify, if appropriate, a custody order, parenting
28 time order, grandparent visitation order, or child support order. The
29 court shall take into account the following in determining whether to
30 modify a custody order, parenting time order, grandparent visitation
31 order, or child support order:

- 32 (1) The distance involved in the proposed change of residence;
- 33 (2) The hardship and expense involved for the nonrelocating
- 34 individual to exercise parenting time or grandparent visitation;
- 35 (3) The feasibility of preserving the relationship between the
- 36 nonrelocating individual and the child through suitable parenting
- 37 time and grandparent visitation arrangements, including
- 38 consideration of the financial circumstances of the parties;
- 39 (4) Whether there is an established pattern of conduct by the
- 40 relocating individual, including actions by the relocating
- 41 individual to either promote or thwart a nonrelocating individual's
- 42 contact with the child.

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(5) The reasons provided by the:

(A) relocating individual for seeking relocation; and

(B) nonrelocating parent for opposing the relocation of the child;

(6) Other factors affecting the best interest of the child:

(c) The court may award reasonable attorney's fees for a motion filed under this section in accordance with IC 31-15-10.

SECTION 12. IC 31-17-2.2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1.5. A relocating parent is responsible for all court and mediation costs concerning a relocation.**

SECTION 13. IC 31-17-2.2-3, AS AMENDED BY P.L.1-2007, SECTION 194, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) Except as provided in section 4 of this chapter, an individual required to file a notice under IC 31-14-13-10 or section 1 of this chapter must:

(1) send the notice to each nonrelocating individual:

(A) by registered or certified mail; and

(B) not later than ninety (90) days before the date that the relocating individual intends to move; and

(2) provide the following information in the notice:

(A) The intended new residence, including the:

(i) address; and

(ii) mailing address of the relocating individual, if the mailing address is different than the address under item (i).

(B) The home telephone number of the new residence.

(C) Any other applicable telephone number for the relocating individual.

(D) The date that the relocating individual intends to move.

(E) A brief statement of the specific reasons for the proposed relocation of the child.

(F) A proposal for a revised schedule of parenting time or grandparent visitation with the child.

(G) A statement that a parent must file an objection to the relocation of the child with the court not later than ~~sixty (60)~~ **thirty (30)** days after receipt of the notice.

(H) A statement that a nonrelocating individual may file a petition to modify a custody order, parenting time order, grandparent visitation order, or child support order.

(b) Except as provided in section 4 of this chapter, if the relocating individual is unable to provide the information required under

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subsubsection (a)(2) not later than ninety (90) days before the relocating individual intends to move, the relocating individual shall provide the information in the manner required under subsection (a) not later than ten (10) days after the date that the relocating individual obtains the information required to be provided under subsection (a)(2). However, the relocating individual must provide all the information required under subsection (a)(2) not later than thirty (30) days before the relocating individual intends to move to the new residence.

SECTION 14. IC 31-17-2.2-5, AS ADDED BY P.L.50-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Not later than ~~sixty (60)~~ **thirty (30)** days after receipt of the notice from the relocating individual under IC 31-14-13-10 or this chapter, a nonrelocating parent may file a motion seeking a temporary or permanent order to prevent the relocation of a child **and must file a notice of objection with a proposed custody order, a proposed parenting time order, and a proposed child support order, to preserve the presumption against relocation with the child.**

(b) Both the relocating and the nonrelocating parent's proposed custody order, proposed parenting time order, and proposed child support order shall be submitted to a mediator appointed by the court if both parents cannot agree on a mediator.

~~(b) Or~~ **(c) If the mediator is unable to resolve the differences in the proposed custody orders, proposed parenting time orders, and proposed child support orders, at the request of either party or the mediator,** the court shall hold a full evidentiary hearing to grant or deny a relocation motion under subsection (a).

~~(c) Or~~ **(d) The relocating individual has the burden of proof that the proposed relocation is made in good faith and for a legitimate reason.**

~~(d) If the relocating individual meets the burden of proof under subsection (c), the burden shifts to the nonrelocating parent to show that the proposed relocation is not in the best interest of the child.~~

(e) If the nonrelocating parent fails to file a motion under subsection (a), the relocating individual who has custody of the child may relocate to the new residence.

(f) If a relocating parent moves with a child before a signed revised custody agreement, parenting time order, and child support order are effective, the relocating parent is guilty of contempt of court and is subject to criminal contempt.

(g) In determining whether a relocating parent has overcome the presumption against relocation with a child, the court shall give equal consideration to the following:

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(1) Whether the child will lose substantial contact, joy, and rearing with the nonrelocating parent.

(2) Whether the relocation with the child would improve the general quality of life for the child.

(3) The relocating parent's motives for seeking the relocation.

(4) Whether the costs of transportation are financially affordable by both parents.

(5) Whether the relocation with the child will cause hardship or undue burden on the nonrelocating parent.

(6) Access to extended family support.

(7) The impact on the child, including whether the relocation is harmful to the health or well-being of the child.

SECTION 15. IC 31-17-2.4-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3. Both parents share equally in mediation costs.**

SECTION 16. IC 31-17-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 4.5. Parenting Time Contempt

Sec. 1. (a) If a parent knowingly and intentionally prevents the other parent from the other parent's parenting time with a child as set forth in a parenting time order, a court shall hold the violating parent in contempt of court and order the violating parent to give compensatory time to the other parent equivalent to the lost time.

(b) If a parent violates subsection (a), the court shall do one (1) of the following:

(1) Order the parent to pay expenses and attorney's fees in bringing the contempt action.

(2) Order the parent to pay a five hundred dollar (\$500) fine.

(3) Require the parent to obtain a bond to assure future compliance with parenting time orders.

(4) Order the parent to be confined in jail.

(5) Order a change in custody or the parenting time order.

(c) The court may order a parent who violates subsection (a):

(1) to participate in a counseling program about the importance of a child having access to both parents; and

(2) to pay counseling costs to reestablish the parent-child relationship.

(d) A law enforcement officer who responds to a call involving parenting time contempt shall file a report with the law enforcement agency that the officer is employed with stating the

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1 **date and time of the response and a description of the incident.**

2 SECTION 17. IC 31-17-7-3 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2009]: **Sec. 3. Except as provided in IC 31-17-2.4-3 and**
5 **IC 31-17-2.2-1.5, each parent is financially liable for each parent's**
6 **attorney's fees concerning child custody matters.**

7 SECTION 18. IC 31-17-8 IS ADDED TO THE INDIANA CODE
8 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2009]:

10 **Chapter 8. Dependent Tax Deductions**

11 **Sec. 1. (a) If both parents have joint custody of a child, the**
12 **parents shall alternate the dependent tax deductions, exemptions,**
13 **and credits each year.**

14 **(b) If one (1) parent does not comply with subsection (a), that**
15 **parent has a civil liability to the other parent for the amount of the**
16 **increase in the other parent's tax liability, and the other parent is**
17 **eligible to claim the dependent tax deductions, exemptions, and**
18 **credits the following two (2) tax years.**

19 SECTION 19. IC 31-17-9 IS ADDED TO THE INDIANA CODE
20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2009]:

22 **Chapter 9. Evidence and Recordings**

23 **Sec. 1. An unedited videotape or audiotape recording is**
24 **admissible as evidence in court in an action under this article.**

25 **Sec. 2. (a) Meetings, hearings, or conferences pertaining to an**
26 **action under this article may not be held without properly**
27 **functioning videotape or audiotape recording devices provided by**
28 **the court.**

29 **(b) Transcripts of videotape or audiotape recordings described**
30 **in subsection (a) shall be reproduced in unedited form at the**
31 **request of a party and provided to the requesting party not later**
32 **than ten (10) days after the request.**

33 SECTION 20. IC 33-24-6-3 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3. (a) The division of**
35 **state court administration shall do the following:**

36 (1) Examine the administrative and business methods and systems
37 employed in the offices of the clerks of court and other offices
38 related to and serving the courts and make recommendations for
39 necessary improvement.

40 (2) Collect and compile statistical data and other information on
41 the judicial work of the courts in Indiana. All justices of the
42 supreme court, judges of the court of appeals, judges of all trial

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1 courts, and any city or town courts, whether having general or
 2 special jurisdiction, court clerks, court reporters, and other
 3 officers and employees of the courts shall, upon notice by the
 4 executive director and in compliance with procedures prescribed
 5 by the executive director, furnish the executive director the
 6 information as is requested concerning the nature and volume of
 7 judicial business. The information must include the following:

8 (A) The volume, condition, and type of business conducted by
 9 the courts.

10 (B) The methods of procedure in the courts.

11 (C) The work accomplished by the courts.

12 (D) The receipt and expenditure of public money by and for
 13 the operation of the courts.

14 (E) The methods of disposition or termination of cases.

15 **(F) Statistics concerning the number of individuals who are**
 16 **incarcerated or are confined in jail for contempt of court**
 17 **for failing to pay child support including the length of**
 18 **sentence and the amount of time individuals spent in jail.**

19 (3) Prepare and publish reports, not less than one (1) or more than
 20 two (2) times per year, on the nature and volume of judicial work
 21 performed by the courts as determined by the information
 22 required in subdivision (2).

23 (4) Serve the judicial nominating commission and the judicial
 24 qualifications commission in the performance by the commissions
 25 of their statutory and constitutional functions.

26 (5) Administer the civil legal aid fund as required by IC 33-24-12.

27 (6) Administer the judicial technology and automation project
 28 fund established by section 12 of this chapter.

29 (b) All forms to be used in gathering data must be approved by the
 30 supreme court and shall be distributed to all judges and clerks before
 31 the start of each period for which reports are required.

32 SECTION 21. THE FOLLOWING ARE REPEALED [EFFECTIVE
 33 JULY 1, 2009]: IC 31-17-2-13; IC 31-17-2-14; IC 31-17-2-15.

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